

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ALLAN COOTES,

No. CY-00-3040-LRS

Plaintiff,

**ORDER DENYING MOTION  
TO VACATE JUDGMENT**

v.

UNITED STATES OF AMERICA,  
et al.,

Defendants.

BEFORE THE COURT is Plaintiff's Motion To Vacate Judgment (ECF No. 51). Defendant has filed a response to the motion as directed by the court (ECF Nos. 54 and 55). Plaintiff has not replied. The motion is heard without oral argument.

Plaintiff seeks to vacate this court's June 6, 2011 "Order Of Dismissal" (ECF No. 50) in which the court noted Plaintiff had not had an attorney enter a notice of appearance on his behalf, nor had he filed a statement of intent to proceed *pro se*, within thirty (30) days as required by this court's April 25, 2011 "Order Re Reopening Of File" (ECF No. 49).

At the conclusion of the April 19, 2011 telephonic conference, in which Plaintiff participated, the court did not state Plaintiff had a duty to file any documents or face dismissal. That duty was imposed pursuant to the court's subsequently entered April 25, 2011 "Order Re Reopening Of File." Plaintiff asserts he never received the April 25 order, even though this court mailed that order to the same address it previously mailed its March 1, 2011 "Order To Show

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1 Cause" (ECF No. 44). Plaintiff responded (ECF No. 45) as directed by the "Order  
 2 To Show Cause" and subsequently participated in the April 19 telephone  
 3 conference pursuant to a "Notice" entered by the court on March 18 (ECF No. 46).  
 4 Plaintiff apparently received the "Order Of Dismissal" which was mailed to the  
 5 same address. Plaintiff filed his "Motion To Vacate Judgment" over two months  
 6 after the April 19 telephone conference and over twenty days after the "Order of  
 7 Dismissal" was entered. He asserts in conclusory fashion that he did not receive  
 8 the court's April 25 order, but offers no specific plausible good faith reason why  
 9 he would not have received said order. It is noted that courtesy copies of both the  
 10 court's April 25 "Order Re Reopening Of File" and its June 6 "Order Of  
 11 Dismissal" were mailed to the Yakama Nation Office of Legal Counsel.

12 Under these circumstances Plaintiff has not established "excusable neglect"  
 13 for his failure to timely respond to the April 25 order. Fed. R. Civ. P. 60(b)(1).  
 14 Vacating the judgment would be prejudicial to the Defendant who reasonably  
 15 believed this matter was resolved in 2004 and then, by virtue of the court's June 6,  
 16 2011 "Order Of Dismissal," reasonably concluded reopening was no longer a  
 17 possibility. Accordingly, Plaintiff's Motion To Vacate Judgment (ECF No. 51) is  
 18 **DENIED**.

19 **IT IS SO ORDERED.** The District Court Executive is directed to enter  
 20 this order and provide copies of it to the Plaintiff at P.O. Box 681, White Swan,  
 21 Washington 98952, and to counsel for Defendants. A courtesy copy of this order  
 22 shall be forwarded to Yakama Nation Office of Legal Counsel, P.O. Box 151, 401  
 23 Fort Rd., Toppenish, WA 98948.

24 **DATED** this 19th day of August, 2011.

25 *s/Lonny R. Sukko*

26 \_\_\_\_\_  
 27 LONNY R. SUKO  
 United States District Judge

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